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Counsel for WEC 96D Niles Investment Trust

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:	)	
	)	Case No. 08-35653
	)	Jointly Administered
Circuit City Stores Inc., et al.,	)	Chapter 11
	)	Hon. Kevin R. Huennekens
Debtors.	)	
_____	)	

**RESPONSE OF WEC 96D NILES INVESTMENT TRUST  
TO LIQUIDATING TRUST'S  
FORTY-SECOND OMNIBUS OBJECTION TO LANDLORD CLAIMS**

WEC 96D Niles Investment Trust (“Niles”), by and through its undersigned counsel, hereby opposes the Forty-Second Omnibus Objection to Landlord Claims (the “Objection”)(Docket No. 11853) filed by Debtor Circuit City Stores Inc. and its affiliated entities (collectively, the “Debtor”) and the Circuit City Stores, Inc. Liquidating Trust (the “Liquidating Trust”). In the Objection, the Debtor seeks, with no support whatsoever, to reduce Niles’ claim (Claim Number 9647, the “Niles Claim”) based on the assertion that Niles failed to mitigate its damages.

Following the rejection of the Lease, Niles sought to minimize its damages. However, as a result of the rejection of the Lease, Niles did not have funds to pay the debt secured by the property, and the property was foreclosed by the lender, resulting not only in the loss of rents,

but the loss by Niles of its equity in the property. As Niles lost control of the property, it was unable to take further steps with respect to the property to mitigate its damages.

Undersigned counsel is the party with authority to discuss mitigation issues on behalf of Niles.

WHEREFORE, Niles respectfully requests that this Court enter an order overruling the Forty-Second Omnibus Objection, and allowing Niles' claim in the amount of \$1,008,343.72.

Dated: Alexandria, Virginia  
June 26, 2012

Respectfully submitted,

/s/ John P. Van Beek

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### **CERTIFICATE OF SERVICE**

I hereby certify that on the 26th day of June, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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/s/ John P. Van Beek  
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